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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/703,437	10/31/2000	David D. Faraldo II	005220.P001	2997
7590	01/13/2005			EXAMINER JEAN, FRANTZ B
Daniel E Ovanezian Blakely Sokoloff Taylor & Zafman LLP 7th Floor 12400 Wilshire Boulevard Los Angeles, CA 90025			ART UNIT 2151	PAPER NUMBER
DATE MAILED: 01/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/703,437	FARALDO II, DAVID D.
	Examiner	Art Unit
	Frantz B. Jean	2151

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 August 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-14,17-26,28,29 and 31-45 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-14,17-26,28,29 and 31-45 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/19/04.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

This action is responsive to the amendment filed 8/19/04. Claims 1-14, 17-26, 28-29, and 31-45 are pending examination. The Claims represent a device directed towards remote monitoring of a business site network. Some of the references cited by the examiner are not included in this action since the applicant submitted them as a part of the application.

Claims 15-16, 27 and 30 have been canceled.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 8/19/04 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 9-10 and 24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 9-10 and 24 refer to cookies that are pre-set on the host digital processing system. This is contrary to information in the specification, which describes that a business site (i.e. a host digital processing system) pre-sets cookies in a monitoring configuration (pg. 11, line 18) that resides in the remote digital processing system (pg. 14, lines 1-8; applicant states that a remote satellite monitoring system (i.e. remote digital processing system) includes a configuration file for storing pre-defined cookies). For purposes of further reviewing these claims it will be assumed that the applicant intended to state the cookies are pre-set by the host digital processing system on the remote digital processing system.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1, 11-14 and 43-44 are rejected under 35 LLS.C. 103(a) as being unpatentable over Sweet et al. (International Pub. No. WO 00/19320) in view of Chapelle (U.S. Patent No. 5,949,976).

As to claim 1, Sweet teaches a system comprising:

a first host digital processing system coupled to the intranetwork(pg. 3, line 11; intranet), the first digital processing system having performance parameters (pg. 11, lines 11-16; Sweet discloses that agents monitors the performance of a web site (first host digital processing system) coupled to a network (intranetwork)); and a first remote digital processing system to monitor a performance parameter (pg. 11, lines 11-16; Sweet discloses that an agent (first remote digital processing system) connected to the network , monitors the performance of a web site), the first remote digital processing system at a first location similar to that of a first expected user of the first host digital processing system (pg. 4, line 17; pg 11, lines 11-16; Sweet discloses that the agent (first remote digital remote system) runs on a computer, and monitors performance from the perspective of the end user).

Sweet fails to teach the limitation of an intranetwork to couple to an extranetwork, and a first remote digital processing system couple to the extranetwork.

However, Chappelle teaches limitation of an intranetwork to couple extranetwork, and a first remote digital processing system couple to the extranetwork (Fig. 1; Fig. 2; col. 4, lines 3-22, 38-44, 54; Chapelle discloses a web browser (remote digital processing system) connected via an Internet network (extranetwork) to a LAN (intranetwork) of production computers in a production center).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sweet in view of Chappelle so as to connect an intranet to an Internet network. One would be motivated to do so to allow specific external users to access the intranet.

As to claim 11, the combination of Sweet in view of Chapelle teaches system of claim 1, wherein the performance parameter is a timing threshold parameter (pg. 4, line 14; Sweet discloses measuring the response time of an application).

As to claim 12, the combination of Sweet in view of Chapelle teaches system of claim 11, wherein the timing threshold parameter is a domain name system lookup time (pg. 4, line 14; pg. 10, line 4; Sweet discloses evaluating a domain name system lookup time).

As to claim 13, the combination of Sweet in view of Chapelle teaches system of claim 11, wherein the timing threshold parameter is a connect time (pg. 7, line 1; Sweet discloses determining a connection time).

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As to claim 14, the combination of Sweet in view of Chapelle teaches system of claim 11, wherein the timing threshold parameter is throughput (pg. 11, line 8; Sweet discloses measuring throughput).

AS per claims 43-44, they contain all the limitations as discussed in claims 1, 11 and 22 above. Furthermore, the combination of Sweet in view of Chapelle teaches a performance parameter that is a latency time between a request for data and receiving a first byte of data pg. 4, line 14; pg. 5, lines 14-19; Sweet discloses measuring total response time (latency)).

Claims 2-6, 9-10, 18-29 and 31-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweet et al. in view of Chapelle, and further in view of Welter et al. (U.S. Patent No. 6,138,157).

As to claim 2, the combination of Sweet in view of Chappelle teaches the invention substantially as claimed (see rejection of claim 1 above).

The combination fails to teach the limitation wherein the extranetwork comprises a first backbone network and wherein the first remote digital processing system is coupled to the first backbone network.

However, Welter teaches the limitation wherein the extranetwork comprises a first backbone network and wherein the first remote digital processing system is coupled to the first backbone network (Fig. 1; col. 1, lines 36, 52; Welter discloses a user machine (first remote digital processing system) connected via an ISP to a backbone network of the Internet).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sweet in view of Chappelle, in view of Welter so as to connect networks using a backbone. One would be motivated to do so to provide long distance connectivity.

As to claim 3, the combination of Sweet in view of Chapelle, in view of Welter teaches system of claim 2, further comprising a second remote digital processing system to monitor a performance parameter of the first host digital processing system (pg. 11, lines 11-16; Sweet discloses multiple agents (remote digital processing systems) monitoring the performance of an application on a web site (first host digital processing system)), wherein the extranetwork further comprises a second backbone network (Fig. 1; col. 1, line 36, 52; Welter discloses multiple user machines connected through ISPs to backbone networks in the Internet) and wherein the second remote digital processing system is coupled to the second backbone network at a second location similar to that of a second expected user of the second host digital processing system (pg. 4, line 17; pg. 11, lines 11-16; Sweet discloses multiple agents (remote digital processing systems) running on computers and monitoring performance from the perspective of the end users).

As to claim 4, the combination of Sweet in view of Chapelle, in view of Welter teaches system of claim 2, further comprising a monitoring operations center coupled to the extranetwork, the monitoring operations center to receive data from the first remote digital processing system (pg. 11, lines 11-16; pg. 13, line 20; Sweet discloses an RT Collector (monitoring operations center) that receives data from the agent (first remote digital processing system)).

As to claim 5, the combination of Sweet in view of Chapelle, in view of Welter teaches system of claim 4, wherein the data includes the performance

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parameter (pg. 13, line 20 - pg. 14, line 2; Sweet discloses that the data includes a response time value).

As to claim 6, the combination of Sweet in view of Chapelle, in view of Welter teaches system of claim 5, further comprising a second extranetwork coupled to the first remote digital processing system and the monitoring operations center (col. 2, line 27; Chapelle discloses that the Internet comprises several large networks (extranets); pg. 11, lines 11-16; Sweet discloses an agent (first remote digital processing system) and an RT Collector (monitoring operations center) connected to a network), to couple to the second extranetwork, the second extranetwork to transmit the data from the first remote digital processing system to the monitoring operations center (pg. 13, line 20; Sweet discloses that the RT Collector (monitoring operations center) receives data from the agent (first remote digital processing system)).

As to claim 9, the combination of Sweet in view of Chapelle, in view of Welter teaches system of claim 1, wherein the first remote digital processing system is configured to store cookies that are pre-set by the host digital processing system (col. 7, lines 56-62; Welter discloses that a web site tester (first remote digital processing system) retrieves a cookie previously sent to it by the web site (host digital processing system) being tested).

As to claim 10, the combination of Sweet in view of Chapelle, in view of Welter teaches system of claim 9, wherein the host digital processing system includes a plurality of web pages (col. 1, line 29; Welter discloses that a web site (host digital processing system) contains multiple web pages) and wherein the pre-set cookies enable the first remote digital processing system to access a particular one of the plurality of web pages independent of another of the plurality of web pages (col. 7, line 66 - col. 8, line 6; Welter discloses that the pre-set cookie enables the retrieval of HTML content from a particular URL).

As to claim 17, the combination of Sweet in view of Chapelle, in view of Welter teaches system of claim 1, wherein the performance parameter is a link verification (col. 8, lines 10-17; Welter discloses verifying the existence of a link and measuring the performance of that link; pg. 8, lines 7-11; Sweet discloses determining a web application's availability).

As to claim 18, the combination of Sweet in view of Chapelle, in view of Welter teaches system of claim 1, herein the performance parameter is a subsidiary page verification (col. 8, lines 10-17; Welter discloses verifying the existence of a link and measuring the performance of that link; pg. 8, lines 7-11; Sweet discloses determining a web application's availability).

As to claim 19, the combination of Sweet in view of Chapelle, in view of Welter teaches system of claim 4, wherein the first remote digital processing system includes a queuing client to control the transfer of data to the monitoring operations center (pg. 19, line 20 - pg. 20, line 4; Sweet discloses that the agent (first remote digital processing center) stores performance data to reduce the frequency of sending the data to the RT Collector (monitoring operations center)).

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Claims 20 and 21 represent method claims that correspond to system claims 2 and 4, respectively. They do not teach or define any new limitations above claims 2 and 4, and therefore are rejected for similar reasons.

As to claim 22, the combination of Sweet in view of Chapelle, in view of Welter teaches method of claim 20, wherein monitoring comprises:

determining the performance parameter for monitoring (pg. 5, line 14 - pg. 6, line 2; Sweet discloses measuring different timing parameters at intermediate points during the course of a transaction);

establishing a connection with the host digital processing system (Fig. 2; pg. 13, lines 1114; Sweet discloses that an agent connects with a web site (host digital processing system) and performs a transaction); and

performing a transaction with the host digital processing system (Fig. 2; pg. 13, lines 1114; Sweet discloses that an agent connects with a web site (host digital processing system) and performs a transaction).

As to claim 23, the combination of Sweet in view of Chapelle, in view of Welter teaches method of claim 22, wherein determining comprises receiving the performance parameter through a configuration interface (col. 4, lines 47-50; Welter discloses that a configuration file is analyzed to get information for testing a web site).

As to claim 24, the combination of Sweet in view of Chapelle, in view of Welter teaches method of claim 22, wherein establishing comprises pre-setting cookies by the host digital processing system to enable the remote digital processing system to access data on the host digital processing system (col. 7, lines 56 - col. 8, line 9; Welter discloses that a web site tester (first remote digital processing system) uses a cookie previously sent to it by a web site (host digital processing system), to access a URL on that web site).

As to claim 25, the combination of Sweet in view of Chapelle, in view of Welter teaches method of claim 22, wherein the performance parameter is a timing parameter associated with the transaction and wherein the method further comprises measuring the timing parameter (pg. 5, line 14; Sweet discloses measuring the response time associated with a transaction).

Claims 26, 28-29 represent method claims that correspond to system claims 12, 14 and 13, respectively. They do not teach or define any new limitations above claims 12, 14 and 13, and therefore are rejected for similar reasons.

As to claim 31, the combination of Sweet in view of Chapelle, in view of Welter teaches method of claim 22, wherein the performance parameter is a correctness parameter and wherein the method further comprises evaluating the correctness parameter (col. 8, lines 1-9; Welter discloses analyzing retrieved HTML data for expected content and errors).

As to claim 32, the combination of Sweet in view of Chapelle, in view of Welter teaches method of claim 31, wherein evaluating comprises:

determining a positive search pattern (col. 8, lines 1-9; Welter discloses using matching methods (positive search));

determining a negative search pattern (col. 8; lines 1-9; Welter discloses using error analysis (negative search)); and

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comparing the positive search pattern with the negative search pattern to verify the correctness of a content (col. 8, lines 1-9; Welter discloses analyzing retrieved HTML data for expected content and errors).

As to claim 33, the combination of Sweet in view of Chapelle, in view of Welter teaches method of claim 31, wherein evaluating comprises:

fetching an accessory file from a storage location (pg. 10, lines 8-16; Sweet discloses attempting to retrieve a portion (accessory file) of a web page); and

verifying that content of the accessory file is available for retrieval (pg. 4, line 14; Sweet discloses evaluating the availability of a web application).

As to claim 34, the combination of Sweet in view of Chapelle, in view of Welter teaches method of claim 31, wherein evaluating comprises:

selecting a link on a web page (col. 8, lines 10-17; Welter discloses retrieving data for a link on a web page; pg. 10, lines 8-16; Sweet discloses attempting to retrieve all of a web page); and

verifying that content corresponding to the web page is accessible (pg. 4, line 14; Sweet discloses evaluating the availability of a web application).

Claim 35 represents a method claim that corresponds to system claim 3. It does not teach or define any new limitations above claim 3, and therefore is rejected for similar reasons.

As to claim 36, the combination of Sweet in view of Chapelle, in view of Welter teaches method of claim 35, wherein monitoring comprises:

evaluating the performance parameters using one of the plurality of remote digital processing systems (Fig. 2; pg. 19, lines 10-16; Sweet discloses that an agent (remote digital processing system) processes the results of a transaction); and transmitting a report on the evaluating from the one of the plurality of remote digital processing systems to another of the plurality of remote digital processing systems (pg. 20, line 5; Sweet discloses that the agent (remote digital processing system) may send the data to a destination other than the RT Collector (monitoring operations center)).

As to claim 37, the combination of Sweet in view of Chapelle, in view of Welter teaches method of claim 36, wherein evaluating the performance parameters includes measuring a timing threshold associated with an interaction with the host digital processing system (pg. 4, line 14; Sweet discloses measuring the response time associated with a computer (host digital processing system) resource).

Claims 38-40 represent apparatus claims that correspond to system claims 2, 4 and 11, respectively. They do not teach or define any new limitations above claims 2, 4 and 11, and therefore are rejected for similar reasons.

Claim 41 represents an apparatus claim that corresponds to method claim 31. It does not teach or define any new limitations above claim 31, and therefore is rejected for similar reasons.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweet et al. in view of Chappelle et al., in view of Welter et al., and further in view of Davis et al. (U.S. Pub. No. 2001/0056483).

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As to claim 7, the combination of Sweet in view of Chappelle, in view of Welter, teaches the invention substantially as claimed (see rejection of claim 6 above).

The combination fails to teach the limitation of the second extranetwork being a public switched telephone network.

However, Davis teaches the limitation of using a telephone network (par. 0061; Davis discloses monitored devices connected to a telephone network).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sweet in view of Chappelle, in view of Welter, in view of Davis so as to monitor different types of networks. One would be motivated to do so to provide a system-wide solution to system monitoring.

As to claim 8, the combination of Sweet in view of Chappelle, in view of Welter, teaches the invention substantially as claimed (see rejection of claim 6 above).

The combination fails to teach the limitation of the second extranetwork being a wireless network.

However, Davis teaches the limitation of using a wireless network (par. 0061; Davis discloses monitored devices connected to a wireless network).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sweet in view of Chappelle, in view of Welter, in view of Davis so as to monitor different types of networks. One would be motivated to do so to provide a system-wide solution to system monitoring.

Claims 42 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweet et al. in view of Chappelle, in view of Welter and further in view of Boss et al. 6, 157,618.

As to claims 42 and 45, the combination of Sweet in view of Chappelle, in view of Welter teaches the invention substantially as claimed (see rejection of independent claims above).

The combination fails to teach the limitation performance parameter is a transfer rate of bytes between a first byte and a last byte of a response and calculating a data transfer rate.

However, Boss teaches the limitation of calculating a data transfer rate (col. 6, lines 3-11; Boss discloses that data gathering clients collect data on the transfer speed of a connection to the Internet).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sweet in view of Chappelle, in view of Welter, in view of Boss so as to monitor the transfer rate of a connection to a web site. One would be motivated to do so to rate the quality of the connection to the web site.

Response to Arguments

Applicant's arguments filed 8/19/04 have been fully considered but they are not persuasive.

Applicants argued that Sweet and Chappelle and the other prior art of record fail to teach a remote digital processing system at a location similar to that of a first expected user of a host digital processing system.

Examiner submits that Applicants interpretation of the prior art is inaccurate. Contrarily to Applicants assumption, Examiner believes that Sweet in combination with the other prior art teach all the limitations of the invention as claimed including a remote digital processing system at a location similar to that of a first expected user of a host digital processing system (see Sweet page 11, lines 11-16; page 4 line 17; page 11, lines 11-16; Chappelle col. 4 lines 3-22, 38-44 and 54; fig 1-2).

Furthermore, In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In addition, In response to applicant's argument that Sweet and Chappelle are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443

(Fed. Cir. 1992). In this case, both prior art belong in the same field of endeavor, networking. Examiner believes that the prior art are combinable.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571 272 3939. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frantz Jean



FRANTZ B. JEAN
PRIMARY EXAMINER